

K. B. asks the Appeals Board of the Utah Labor Commission to review Administrative Law Judge Eblen's dismissal of Mr. B.'s complaint of unlawful employment discrimination against the Utah State Department of Human Services.

The Appeals Board exercises jurisdiction in this matter pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-5-107(11).

BACKGROUND AND ISSUE PRESENTED

On June 26, 2000, Mr. B. filed a discrimination complaint with the Utah Antidiscrimination and Labor Division (“UALD”) against the Utah State Department of Human Services (“Human Services”). In his complaint, Mr. B. alleged that Human Services had violated the Utah Antidiscrimination Act (Utah Code Annotated Title 34A, Chapter 2; “the Act” hereafter) by withholding Mr. B.’s promotion as “lead worker” because he suffered from a disability, namely, migraine headaches.

On November 27, 2000, UALD dismissed Mr. B.’s complaint on the grounds that more than 180 days had elapsed between the last date Mr. B. had suffered harm from the alleged discrimination and the date he filed his complaint. UALD therefore concluded that, pursuant to 34A-5-107(1)(c) of the Act, it lacked jurisdiction over Mr. B.’s complaint.

As permitted by 34A-5-107(5) of the Act, Mr. B. requested de novo review of this matter by the Labor Commission’s Adjudication Division. The matter was assigned to Judge Eblen, who scheduled a hearing on June 11, 2001, to take evidence on whether Mr. B. complaint had been filed within the Act’s 180-day limitation period. However, the parties submitted no evidence, but only argument, at the hearing.

Judge Eblen subsequently issued what was titled an “Order On Motion To Dismiss.” This Order included findings of fact and legal conclusions regarding Mr. B.’s compliance with the 180-day limitation. In summary, Judge Eblen made the factual determinations that Mr. B. had failed to file his complaint within the Act’s 180-day limitation period, that no basis existed to toll that limitation period and that Mr. B.’s complaint should, therefore, be dismissed with prejudice.

Mr. B. then filed the motion for review that is now before the Appeals Board.¹ In his motion for review, Mr. B. contends his complaint was improperly dismissed without an evidentiary hearing and that Judge Eblen incorrectly analyzed the alternative theories by which he contends he satisfied the Act’s 180-day limitation period.

DISCUSSION

The record in this matter indicates substantial procedural confusion. Although the hearing of June 11, 2001, was scheduled as an evidentiary hearing regarding Mr. B.’s compliance with the Act’s 180-day limitation period, no evidence was actually presented at the hearing. Instead, the

parties' attorneys devoted their entire presentations to argument. Then, Judge Eblen included findings of fact in her Order as though an evidentiary hearing had occurred. Nevertheless, the Order was titled as an "Order On Motion To Dismiss," indicating that Judge Eblen viewed the Order as the result of some form of summary proceeding, rather than a plenary determination of the jurisdictional merits of Mr. B.'s complaint.

After careful consideration of the procedural posture of this case, the Appeals Board concludes that Judge Eblen's Order cannot be viewed as a plenary determination of the jurisdictional facts because there was no evidentiary hearing. Consequently, the Order must be viewed as an order granting summary judgment against Mr. B. on the limitation issue

Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Furthermore, the party against whom summary judgment is sought is entitled to have all the facts and inferences considered in the light most favorable to him or her. In the present case, very little evidence is available. But when such "evidence" is viewed in the light most favorable to Mr. B., the Appeals Board concludes that genuine disputes exist regarding the dates on which Mr. B. suffered harm as result of Human Services' actions, as well as the possible continuity between Human Services' initial actions in this matter and its later decisions not to place Mr. B. in a lead worker position. Summary Judgement is therefore inappropriate.

ORDER

In light of the foregoing, the Appeals Board sets aside Judge Eblen's summary dismissal of Mr. B.'s complaint and remands this matter to Judge Eblen for further proceedings consistent with this decision. It is so ordered.

Dated this 27th day of February, 2004.

Colleen S. Colton, Chair
Patricia Drawe
Joseph Hatch

1. Mr. B.'s motion for review requested an opportunity to submit additional written and oral argument. On August 18, 2003, Mr. B. was advised that the Appeals Board did not generally permit oral argument, but that he would be allowed 30 days to submit additional written argument in support of his motion for review. Human Services would then be allowed 20 days to respond, after which time the Appeals Board would consider this matter to be ready for decision.

Mr. B. did not submit any additional argument. On that basis, Human Services moved for entry of default against Mr. B. and summary dismissal of his motion for review. The Appeals Board declines to grant Human Services' request. Although Mr. B. was given the opportunity to submit an additional memorandum, he was not required to do so. His previously filed motion for review is sufficient to establish Appeals Board jurisdiction. Consequently, the Appeals Board will proceed to address the arguments raised in Mr. B.'s motion for review.

